UTAH CAPITAL INVESTMENT BOARD MEETING
Friday, March 19, 2004
Minutes

Members Present:	David Harmer, Sterling Jenson, David Hemingway, Ed Alter
Members Absent:	Robert Majka
Visitors:	Dan Harrison
Staff:	Jeff Gochnour, Rod Linton, Jeremy Neilson, Tamee Roberts, Phil Pugsley

I. WELCOME

The meeting was called to order at 3:10 pm on Friday, March 19, 2004. Board Chair, David Harmer, welcomed everyone. The minutes from the February meeting were reviewed and a motion was called for.

MOTION: Sterling Jenson moved and David Hemingway seconded the motion to approve the February minutes as amended. The motion carried.

II. DISCUSSION ITEMS

A. UPDATE ON MEETING WITH AUSTIN JOHNSON

Mr. Harmer met with the state auditor Austin Johnson and asked if he would be taking action against the Utah Fund of Funds. Mr. Johnson felt he probably would. Mr. Harmer then expressed his concern with a time frame. Mr. Johnson expressed he could put together his complaint in a five week time-frame allowing for a response as quickly as possible. Once the complaint and answer is filed, both sides will file for a summary judgment motion which could receive a expedited process through the 3rd District court in a four month time-frame. Mr. Harmer outlined what Mr. Johnson's actual concerns were: 1- lending of state credit by using the tax credits as guarantees, and 2- a public entity creating a private entity or the corporation setting up a private entity to run the funds of funds. David Harmer also requested that if Mr. Johnson would be taking action against the program, he should put all the issues out on the table and deal with all of them at once. Mr. Harmer said Mr. Johnson agreed that they would provide a complaint within a 5-week time frame. Ed Alter expressed there may be private entities with an interest in the program that would participate in some way with the litigation process. David Hemingway related how important it is to go through this legal process for the protection of the investor.

B. DISCUSSION OF CRITICAL PATH FOR SUCCESS

Mr. Neilson explained the five general areas of obligations: 1- tax credits, 2- policy and procedure, 3- rule making, 4- contracts and, 5-investments. This Board is mainly charged with guarding the tax credits, setting the policy and procedure in how to use them, how to protect them and how to redeem them. Policy needs to be set on exactly what needs to be done to monetize the tax credit if an investor is found to have insufficient returns and there is the need to make up the shortfall through monetizing a tax credit. Another short discussion took place on the disclosure issues and this board needs to go through rule making in order to assure that protection of venture firm's ROI. There is a movement now where top venture capital firms will not put money in public entities because they are worried about freedom of information acts, and getting information on that fund's returns. Ed Alter explained that this goes to their holdings and their current valuation on those holdings and that they will not give on those two things. Mr. Neilson explained that the legislation is not clear on disclosure except to say that there will be an audit on all the assets of the Fund of Funds. It was further stated that this Board has an obligation to assist in audit and that audit will be given to the legislature and the Governor. Rule making procedures need to be made to shore up that issue saying "only numbers in aggregate will be reported—nothing in detail". So when we go to raise funds from

the top VC they will feel comfortable investing with us. From conversations with Fund of Fund managers Mr. Neilson explained that the Utah Fund of Funds needs a concrete process that will satisfy the VCs that the board will only report in aggregate numbers, not individual detail. Without this process there will not be a chance of getting top dollars.
Regarding the contract, this board needs to have an agreement between it and the Corporation regarding what their interaction will be. If tax credits need to be monetized what involvement do the two entities have in the process? Also the legislation specifically states that if the tax credit is ever monetized, it becomes a loan to the Utah Fund of Funds so there needs to be an agreement between the Board and the corporation regarding that. If there needs to be a draw on the credits you need to first look at the reserve, if there are any earnings in the reserve account the investor gets paid out of that first. If they don't have earning in the reserved, they will draw on the credits, it is a loan from the Fund of Funds back to the State of Utah and if they are successful in the future they can pay it off. Mr. David Hemingway explained that this process is exactly the opposite of banking in that bankers look first at the problems and venture capitalists look at the successes and how to encourage those. Mr. Harmer felt that when making the investments, the agreements would be focused on conveying to the Corporate Board what criteria should be used, the end results needed, and the diversification of funds. Built-in flexibility on the contract is needed to revise and reevaluate it. Mr. Hemingway expressed that the State of Utah really will want to know, not the name of the company, or how much was invested in each company, or how they are priced or the valuation. The interested parties will want to know how much money went into Utah companies, how many people work for those companies, what kind of employment those companies provide, the sales and taxes paid. If we can not get the VC's to give this kind of information, this will not be successful. This information can be compiled by DCED staff if the names and the amount of the Utah investments are available. The state may also be interested in the ROI regarding how many venture capital firms have opened new offices in Utah or have formed affiliations with Utah firms. Further, the state may wish to know the danger the tax credits may be in at any one point, and what the aggregate market value is vs. the current market.

C. MR. HARMER'S REVIEW OF OTHER STATE'S PROGRAMS

Mr. Harmer drew attention to some articles on other state's programs similar to the Fund of Funds. He stated that a number of states are doing CAPCO programs even though they seem to be rather ineffective deals. In a CAPCO, states provide downside guarantee saying "if you take your money and invest it into these kinds of ventures in the state to help create jobs and you lose money, the state will indemnify you. But if you make money you keep the money you make. A number of these kinds of programs in other states have come under condemnation and many are considering shutting them down. In our program there is retained an up side opportunity for the state. Some other states have created programs where they provide a state agency with direct funding to make investments into companies, which can be a bad thing due to politics. In these cases it is difficult to hire a decent fund manager because they cannot compensate the position at a market rate and senators and legislators get involved in recommending deals to the state agency. Having political people involved would be undesirable. Mr. Hemingway explained the importance of having an open enough system so that wise investment choices will be made by the corporation instead of by a state controlled system. Mr. Harmer expressed that the individuals on the corporate board will be key to the process and its success.

D. TAX CREDITS UPDATE

Mr. Neilson has worked on some policy procedure contracts and is having people review a first draft. He will bring a second or third draft to the board and have them make suggestions of what is liked and needed and get this document nailed down. The issues of tax credits and the designated purchasers need to be fleshed out. We need agreements signed. David Hemingway expressed concern about his organization monetizing the tax credits. Monetizing at a discount was discussed. The nuisance factor was the main concern. Ed Alter asked if any other corporations had given the Department of Community and Economic Development feedback on monetizing the funds. David Harmer explained that this was a goal. Sterling Jenson has pinged some of his people on this issue and has received some feedback. A suggestion was made to have the tax commission itself monetize these from the taxes paid from the corporations. Staff will look into this possible solution.

E. ESTABLISHMENT OF THE UTAH CAPITAL INVESTMENT CORPORATION

Mr. Harmer informed the board that the Utah Capital Investment Corporation (UCIC) board has been completed. Mr. Harmer then spoke about trying to resolve the issue of whether the members of UCIC board are indemnified by the State of Utah or if they needed to get their own Errors & Omission /Directors and Officers insurance. Ed Alter expressed and Phil Pugsley agreed that all Boards are indemnified but Mr. Harmer clarified that the corporation Board is quasi-governmental and the Board is not appointed by the Governor so the arms length distance of this Corporation Board exposes them to some kind of liability and clarification on indemnification needs to be obtained.

Rules and procedures will need to be clarified and public notice given on them. Mr. Harmer would like to map out the process and identify which areas need rules and which need policies. Ed Alter expressed that the rules need to be general because every time you want to change any little thing you will have to go through the rule making process which means going to the Board, having a 30-days notice period, and publishing it in the news paper. Make the rules general and as broad as possible.

Mr. Harmer would like to have a combined meeting with the UCIC board of directors for next months meeting. In this meeting we would wish to explain all the parts of this operation and how it will work. Clarification on the general and more specific requirements of each board needs to be solidified in a joint meeting.

F. CONFIRMATION OF MEETING SCHEDULE

In May the UCI Board and UCI Corporation Board should meet jointly. The corporation should be on it own first to become acquainted and learn their role.

III. ADJOURNMENT

With agenda items forwarded to next month, the meeting adjourned at 4:40 pm.